

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In Re:)
)
DIAMONDHEAD CASINO) C. A. No. 24-11354-JKS
CORPORATION,)
)
ALLEGED DEBTOR.) Chapter 7

MOTION OF THE ALLEGED DEBTOR, DIAMONDHEAD CASINO CORPORATION, TO VACATE THE COURT'S OPINION AND ORDER DATED JULY 30, 2025 AND ORDER DATED JULY 31, 2025 AND DISMISS THE INVOLUNTARY PETITION OR, ALTERNATIVELY, TO ALTER AND AMEND THE OPINION AND ORDERS

Diamondhead Casino Corporation (“Debtor”), by and through undersigned counsel, respectfully moves this Court: to vacate its Opinion (D.I. 42) and Order (D.I. 43) dated July 30, 2025; to vacate its Order (D.I. 45) dated July 31, 2025; to dismiss the Petition filed against the Debtor pursuant to 11 U.S.C. §§303(b)(1), 303(i) and 305; or alternatively, to alter and amend its Opinion (D.I. 42) and Order (D.I. 43) dated July 30, 2025, pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9023.

The largest Petitioner, J. Steven Emerson as Successor to Steven Emerson Roth IRA, lacks standing under §303(b)(1). This Petitioner is not a Debenture Holder, has never sued the Debtor, is not a judgment creditor as claimed, is not a creditor with a valid assignment of a debenture, and had no valid claim when the

Petition herein was filed. The Petitioner lacks standing under 11 U.S.C. §303(b)(1). The filing herein was made in bad faith, warranting dismissal and appropriate relief pursuant to 11 U.S.C. §§ 303(b)(1), 303(i) and 305.

Diamondhead Casino Corporation respectfully moves this Court to alter and amend its findings of fact and make additional findings of fact in its Opinion (D.I. 42) and Order (D.I. 43) dated July 30, 2025, to comport with the foregoing and in light of certain erroneous material facts identified in the accompanying brief filed in support of this motion.

WHEREFOR, for these reasons and those set forth in the brief filed in support of this Motion, the Debtor respectfully requests that the Court:

1. Vacate the Opinion (D.I. 42) and Order (D.I. 43) dated July 30, 2025;
2. Vacate the Order dated July 31, 2025 (D.I. 45);
3. Dismiss the Involuntary Petition with prejudice;
4. Alter and Amend the Opinion (D.I. 42) and Order (D.I. 43) to make additional findings of fact, to delete certain findings of fact, and to correct certain material findings of fact;
5. Award Debtor costs, attorney's fees and damages under §303(i); and
6. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

BIGGS & BATTAGLIA

/s/ Robert D. Goldberg

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Dated: August 15, 2025

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion was served electronically, this 13th day of August, 2025, on the following:

Jonathan M. Stemerman, Esquire
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/s/ Robert D. Goldberg
Robert D. Goldberg